

**BEFORE THE STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS**

STATE BOARD OF REGISTRATION)
FOR THE HEALING ARTS,)
Board,)
v.)
DENNIS O'BRIEN)
P.O. Box 631)
Trenton, MO 64683)
Licensee.)

Case No. 2000-000114

SETTLEMENT AGREEMENT

Dennis O'Brien, ("Licensee") and the State Board of Registration for the Healing Arts (the "Board") enter into this Agreement for the purpose of resolving the question of whether Licensee's license as a ^{Physical Therapist} ~~physical~~ therapist will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to §621.045, RSMo 2000

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may

be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law; Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claims, actions, causes of action, fees, costs, and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo 2000, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement, or any portion thereof, void or unenforceable.

5. The parties stipulate and agree that the order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620, and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Dennis O'Brien, License No. 102786 ("Licensee") is licensed by the Board as a physical therapist. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. At the time of the events alleged herein, Licensee was employed at Harrison County Community Hospital ("Harrison Hospital") as a professional physical therapist, in-

home services provider.

4. On or about December 21, 1999, N.C. was seen in her home by Licensee for physical therapy on N.C.'s right knee.

5. On or about December 22, 1999, N.C. filed a complaint of abuse against Licensee at Harrison Hospital. N.C. stated Licensee's conduct on or about December 21, 1999 was offensive.

6. On or about December 23, 1999, N.C. filed a complaint of abuse against Licensee at the Missouri Division of Aging. N.C. stated Licensee's conduct on or about December 21, 1999 was offensive. The Division of Aging conducted an investigation.

7. On or about December 28, 1999, Licensee was placed on unpaid administrative leave while Harrison Hospital conducted an investigation.

8. As a result of Harrison Hospital's investigation, on or about January 17, 2000, Licensee's employment was terminated for unprofessional conduct.

9. On or about November 6, 2000, the Division of Aging notified Licensee that it intended to place his name on a record of persons who have "recklessly, knowingly or purposely abused or neglected an in-home service client, in violation of Section 660.300, RSMo 2000 ("EDL List").

10. On November 13, 2000, Licensee submitted his 2001 license renewal application ("Application"). On the application, Licensee answered two (2) questions falsely in that he denied being dismissed by an institution (Question No. 6), and denied having any

charges filed against him with a disciplinary agency (Question No. 8).

11. On or about December 2, 2000, Licensee requested a hearing to determine if his name should be placed on the EDL List.

12. On or about April 20, 2001, after being rescheduled twice at the request of Licensee's attorney, a hearing was held to determine if Licensee's name should be placed on the EDL List.

13. On or about January 4, 2002, the Deputy Director of the Missouri Department of Health and Senior Services issued his written decision. The Deputy Director concluded that Licensee violated Section 660.300.12, RSMo 2000 and affirmed the Division of Aging's decision to place Licensee's name on the EDL List.

JOINT PROPOSED CONCLUSIONS OF LAW

14. Cause exists for Petitioner to take disciplinary action against Licensee's license under section 334.100.2(3), (4), (5), and (6) which states in pertinent part:

2. "The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:"

* * *

- (3) "Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this Chapter;"
- (4) "Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter. . ."
- (5) "Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter."
- (6) "Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter."

* * *

10. Cause exists for the Board to take disciplinary action against Licensee's license under 334.100.2(3), (4), (5), and (6), RSMo 2000

II.

JOINT AGREED ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following

shall constitute the order entered by the State Board of Registration for the Healing Arts in this matter under the authority of §621.110, RSMo 2000. This agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The physical therapy license, No. 102786, issued to Licensee is hereby VOLUNTARILY SURRENDERED in lieu of disciplinary action. Licensee understands that this Agreement will be reported to the National Practitioner's Databank as an action in lieu of discipline.

2. Within 10 days of the effective date of this Agreement, Licensee shall return all indicia of Missouri licensure to the Board, including but not limited to, his wall-hanging license and pocket card. If Licensee is unable to locate his license, he shall execute an affidavit so stating and shall forward the affidavit to the Board within 10 days of the effective date of this Agreement.

B. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC §1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, of from the negotiation or execution of this agreement.

The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

C. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

BOARD

Dennis O'Brien RPT
Dennis O'Brien Date 5/2/02

Tina Steinman 5/10/02
Tina Steinman Date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

Loretta Schouten 5/7/02
Loretta Schouten Date
Assistant Attorney General
Missouri Bar No. 52290

Broadway State Office Building
Post Office Box 899
Jefferson City, MO 65102
(573) 751-4087
(573) 751-5660 Facsimile

Attorney for Licensee

Attorneys for Board

EFFECTIVE THIS 10 DAY OF May, 2002.